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Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

JACK M. HELGESEN, :

Plaintiff/Respondent.:

vs. : Case No. 17088

EKERETE I. INYANGUMIA, :

Defendant/Appellant. :

RESPONDENT'S BRIEF

Appeal from an Order of the Second Judicial
District Court in and for Weber County
Utah, Honorable John F. Wahlquist, Judge.

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IN THE SUPREME COURT OF THE STATE OF UTAH

JACK M. HELGESEN, :

Plaintiff/Respondent.:

vs. :

Case No. 17088

EKERETE I. INYANGUMIA, :

Defendant/Appellant. :

RESPONDENT'S BRIEF

NATURE OF CASE

Jack M. Helgesen filed a personal injury action against Ekerete I. Inyangumia to recover damages he sustained in an automobile accident on October 12, 1978.

DISPOSITION IN THE LOWER COURT

On December 26, 1979, Judge John F. Wahlquist awarded Mr. Helgesen a default judgment against Mr. Inyangumia in the amount of \$15,000.00 as general damages; \$1,600.00 in lost wages; \$347.90 in reimbursed medical expenses; and \$92.60 as costs. (R.10-14,16). On March 3, 1980, Mr. Inyangumia's Motion to Set Aside Default was heard by the Court and denied, although 10 days were granted Mr. Inyangumia to file additional affidavits to support the

claim for relief. (R.38,39). On April 14, 1980, Judge Wahlquist held a second hearing to review Mr. Inyangumia's Motion to Set Aside Default Judgment and again concluded that there was insufficient basis to do so, although upon the stipulation of plaintiff's counsel, he amended the prior default judgment to the extent that previously awarded PIP benefits (in the amount of \$347.90) were deducted from the original default judgment because by the date of this second hearing the Utah Supreme Court had issued its decision in Allstate v. Ivie, 606 P.2d. 1197 (1980). (R.59,62).

RELIEF SOUGHT ON APPEAL

That Judge Wahlquist's decision herein not be reversed as requested by Appellant.

STATEMENT OF FACTS

On October 12, 1978, Mr. Helgesen, as he was stopped in a line of traffic on Harrison Blvd. in Ogden, Utah, was rear-ended by Mr. Inyangumia. (R.65). He suffered a fracture of the T-9 vertabrae with nerve root compression at the C6-7 vertebrae with resulting paresthesia of the 3rd, 4th and 5th ring fingers of his left hand. (R.66).

On April 15, 1979, Mr. Helgesen, as he was stopped at an intersection in Roy, Utah waiting to make a left turn,

was hit by a vehicle driven by Wendy Meenderink when she lost control of her vehicle. Mr. Helgesen sustained injury to his lower back resulting in a permanent disability in his lower back and left leg.

Coincidentally, Allstate Insurance Company was the insurer for both individuals.

After trying to negotiate settlements on these two claims, when it became apparent that no settlement would be reached, separate complaints on both actions were filed in the Second Judicial District Court for Weber County on November 16, 1979. (R.1). Prior to filing those complaints, Allstate Insurance Company was sent copies of each complaint on November 12, 1979. It is acknowledged by Allstate that the copies of the complaints were received along with an accompanying cover letter from plaintiff's counsel. (Appellant's Brief, page 2). Along with each complaint served were Requests for Admissions which were also served upon each defendant. (R.3,4). Mr. Inyangumia was served on November 24, 1979. Ms. Meenderink was served with Summons, Complaint and Requests for Admissions on November 23, 1979. Both complaints were referred to Allstate for defense in a timely fashion (R.23) although on neither case did Allstate do anything whatsoever in terms of answering the complaints or requesting any extension of time

within which to answer the complaints.

Likewise, between November 12, 1979, when Allstate was notified of the commencing litigation, until the default judgment was obtained on behalf of Mr. Helgesen, they made no further effort to reach a settlement in either case. Between November 12, 1979, until it learned of the default judgment, Allstate simply did nothing.

On January 11, 1980, Allstate filed a Motion to Set Aside Default which was heard by Judge Wahlquist on March 3, 1980. Judge Wahlquist reviewed the entire matter and concluded that Allstate had not shown sufficient grounds for relief under Rule 60(b) nor had they filed any affidavits to support a meritorious defense which would in any way contradict the sworn testimony of Mr. Helgesen presented at the default hearing on December 26, 1979. Allstate was given 10 additional days to submit additional affidavits supporting their claim for relief. Additional affidavits were presented to the Court and on April 14, 1980, Judge Wahlquist again reviewed the matter fully in light of all the information submitted by Allstate and again determined that they had shown insufficient justification for relief under Rule 60(b) although on the basis of Allstate v. Ivie, supra, which had then been decided by the Utah Supreme Court amended the prior default judgment to the extent of elimi-

nating Mr. Helgesen's medical damages previously paid as PIP benefits.

ARGUMENT

POINT I. THERE BEING NO "MANIFEST ABUSE OF DISCRETION" IN THE TRIAL COURT'S REFUSAL TO SET ASIDE DEFAULT, APPELLANT IS NOT ENTITLED TO THE RELIEF SOUGHT.

The named Appellant ostensibly sought relief in this case pursuant ~~to~~ Rule 60(b) of the Utah Rules of Civil Procedure alleging mistake, inadvertance, suprise or excusable neglect as the basis for relief. These are not mere words which have no vitality, no form, nor any substance. Rather, they are ascertainable standards by which a trial judge must measure the actions or omissions of the party seeking relief and considering all relevant factors grant or deny the relief sought. They are standards which must, of necessity, be discretionary with the trial judge and this Court has ruled over and over that in discretionary matters, a trial court's ruling will not be reversed absent a clear and unfettered abuse of discretion on the part of the trial court. Airkem Intermountain, Inc. v. Parker, 513 P.2d 429 (Utah 1973).

A "manifest abuse of discretion" Airkem Intermountain, Inc. v. Parker, supra, footnote 5, is simply

not present in this case. Rather it is a case where Allstate's motion could have been granted but after full consideration by the trial court, was not.

In Warren v. Dixon Ranch Co., 260 P.2d 711 (Utah 1953), this Court upheld a lower court's refusal to vacate a default judgment stating:

. . . Discretion must be exercised in furtherance of justice and the court will incline toward granting relief in a doubtful case to the end that a party must have a hearing. (Citations omitted). However, the movant must show that he has used due diligence and that he was prevented from appearing by circumstances over which he had no control. (Citations omitted).

A showing of due diligence or of circumstances over which Allstate had no control by which it was prevented from filing an answer on behalf of Mr. Inyangumia are notably absent in this case. To the contrary, Allstate which is in the insurance business and experienced in litigation, was simply negligent itself in the handling of this complaint. It is attempting to shield the negligence of its adjuster under the cloak of Mr. Inyangumia's asserted right to a trial on the merits.

Rhoades Western v. Clarke, 480 P.2d 677 (Ariz. App. 1971) is directly on point. In Rhoades Western, the plaintiff filed a complaint in a tort action on June 25, 1968

serving the two named defendants on the same day. Rhoades Western failed to answer and on July 23, 1968, a default judgment was entered against it. On July 24, 1968, attorneys for the insurer filed a motion to vacate the default judgment. The motion was denied by the trial court and the denial upheld by the Arizona Court of Appeals.

In Rhoades Western the complaint had been delivered to the Appellant's insurer and due to the negligence of an employee of the insurer, was not forwarded to the insurance company's attorney until the day after the default judgment had been entered. The Arizona appellant court ruled that the mere negligence of the insurer was not sufficient to support a finding of excusable neglect. The Court stated:

In our opinion, the negligence of the Insurance Supervisor was not excusable neglect and was more nearly similar to the situation which the court reviewed in Welton-Mohawk Irrigation and Drainage District v. McDonald, 405 P.2d 299 (1965). We find no abuse of discretion in the trial court's failure to grant the motion to vacate the default.

An identical conclusion was reached by the Indiana Court of Appeals in Henline v. Martin, 348 N.E.2d 416 (Ind. App. 1976). In Henline a complaint was filed against the named appellant on July 26, 1974. The named appellant delivered the same to his insurer who, through the negligence of its adjuster, failed to respond and a default judgment was

entered accordingly against the named appellant. In Henline as in Rhoades Western above, the insurer moved to set aside the default judgment the day after the same was entered by the Court. In each case the trial court refused to set aside the default and was upheld by the appellant court which found no abuse of discretion.

The same concept of negligence applies to Allstate's averred mistake, inadvertance or surprise. It's omission to act in this case is not subject to the sole interpretation that its adjuster was mislead about the course of litigation after Mr. Helgesen's Complaint was filed.* Taken out of context it is a convenient reason to assert but it is equally susceptible of an interpretation that in~~f~~orming his belief as to the course of the litigation the insurance adjuster was simply negligent in the formation of his belief. Given the equally possible interpretation applicable to the formation of the adjuster's

*A significant error in appellant's brief needs to be corrected. The correct wording of the letter from plaintiff's counsel to Allstate's adjuster dated November 12, 1979, a copy of which is attached hereto and incorporated by reference as Appendix I, states as follows:

Our offer to settle these two cases for the sum of \$18,000.00 will remain open through the 20 day period for answering the respective complaints, otherwise the cases will be tried.

Appellant mistyped "effort" instead of "offer."

belief, it cannot be said that the trial court has manifestly abused its discretion. The trial judge believed that Allstate had not acted in a manner entitling it to relief under Rule 60(b) and there are ample facts to support its decision. The damages awarded did not exceed the policy coverage limits in force for Mr. Inyangumia and Allstate, as regards Mr. Helgesen, must bear the consequences of its own negligence.

POINT II. ANY ALLEGED DEFECT OF THE
JUDGMENT WAS CURED AND THE DEFAULT
JUDGMENT OF THE TRIAL COURT WAS NOT VOID.

The default judgment in this case is not void under Allstate v. Ivie, supra. As was previously noted, the default judgment was specifically amended to eliminate reimbursement to Mr. Helgesen of PIP benefits paid by his own no-fault carrier in recognition of the Ivie decision which was issued after the prior default judgment had been obtained. Any asserted defect was thereby cured.

POINT III. DAMAGES AWARDED WERE PROPER
AND THERE WAS AMPLE EVIDENCE TO SUPPORT
THE AWARD.

Concerning the damages awarded Mr. Helgesen, a default hearing was held, after which the court made its determination. Rule 55(b) requires a hearing on the issues of damages or to establish the truth of any averment to the

extent that the court "deems necessary and proper." Such a hearing was held, the evidence presented to the court was deemed proper and a judgment entered accordingly.

Appellant's argument to the competency of the evidence to support the damages is without merit as this is likewise a discretionary determination of the trial judge which may not be disturbed absent a manifest abuse of discretion or a clearly excessive award of damages made. This simply isn't present here.

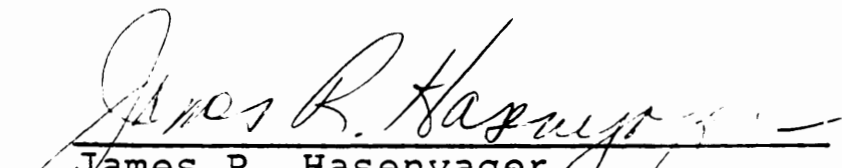
CONCLUSION

The real basis of appellant's claim is that Allstate was negligent in the processing of Mr. Helgesen's complaint and under the guise of claiming prejudice to Mr. Inyangumia, is attempting to escape the consequences of its own negligent omissions. Its failure to do anything in response to the filing of Mr. Helgesen's complaint was not the type of mistake, inadvertance or excusable neglect contemplated by Rule 60(b) by which Allstate, in the exercise of due diligence was prevented from answering plaintiff's complaint due to circumstances over which it had no control. The trial judge had ample basis for concluding that Allstate was negligent and after fully reviewing the facts decided to deny the relief sought. There being more than ample facts

upon which to base his decision, there has been no abuse of discretion warranting a reversal.

DATED this 29th day of August, 1980.

WARNER, MARQUARDT & HASENYAGER


James R. Hasenyager
Attorneys for Respondent

CERTIFICATE

I hereby certify that on this 29 day of August, 1980, I mailed two copies of the foregoing document, postage prepaid to Robert W. Miller and Nelson L. Hayes, attorneys for Appellant, P. O. Box 2465, Salt Lake City, Utah 84110.


Tori H. Thurston

WARNER
MARQUARDT
& HASENYAGER

WARNER, MARQUARDT & HASENYAGER
ATTORNEYS AT LAW
SIXTY-TWO FIFTH ST. E.
CODY, UTAH 84401

PHONE (407) 4-5540

November 12, 1979

Mr. Charles Kent
Allstate Insurance
5650 South 410 West
Salt Lake City, Utah 84107

Dear Mr. Kent:

It is unfortunate that we have been unable to settle the cases regarding the above named Jack Helgesen. Because of the delay in trying to resolve this case, suit has been initiated on both accidents. Our offer to settle these two cases for the sum of \$18,000.00 will remain open through the 20 day period for answering the respective complaints, otherwise the cases will be tried.

As there is no question of liability on either case, with the permanent spine and nerve damage received by Mr. Helgesen in these accidents, I fully expect the verdicts to be considerably in excess of our offer.

Copies of the complaints are enclosed for your convenience.

Sincerely,

WARNER, MARQUARDT & HASENYAGER

James R. Hasenyager

JRH/tt

APPENDIX I